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September 30, 1992

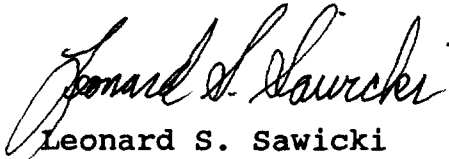
Ms. Donna Searcy
Secretary
Federal Communications Commission
Room 222
1919 M Street NW
Washington, D.C. 20554

Re: CC Docket No. 92-77

Dear Ms. Searcy:

The attached paper addresses the FCC's authority and recent decisions related to the Commission's consideration of the issue of 0+ in the public domain. Please enter this material into the files of this proceeding.

Sincerely,



Leonard S. Sawicki

Attachment

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Title II of the Communications Act of 1934, as amended, grants the Commission authority to regulate common carriers engaged in the provision of interstate or foreign communications services. According to the Commission, in order to determine whether a service is subject to its jurisdiction under Title II, it must be an interstate or foreign communications service, and the entity providing the service must be a common carrier. AT&T's provision of validation and screening services and billing name and address (BNA) information meet these criteria and, therefore, the Commission possesses the authority to order AT&T to provide these services to operator service providers (OSPs) in connection with AT&T card calls.

AT&T's validation and screening services are "communication by wire" within the meaning of 47 USC § 153(a)¹ based on the rationale used by the Commission in the LEC Billing Order,² because they are "incidental" to AT&T's provision of interstate communication service. In the LEC Billing Order, the Commission found that the LEC validation and screening databases "are simply repositories of information that the LECs necessarily obtain in the course of doing business as local exchange service

¹ 47 USC § 153(a) defines "wire communication" or "communication by wire" as "the transmission of writing, signs, signals, pictures, and sounds... by aid of wire... between the points of origin and reception of such transmission, including all instrumentalities, facilities, apparatus, and services... incidental to such transmission."

² Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards (LEC Billing Order), CC Docket No. 91-115, FCC 92-168, released May 8, 1992.

providers," and that "the account and screening information is included for display in the LECs' databases depending upon the status of the subscriber's local service."³ In addition, the Commission found that, without access to LEC validation and screening data, the placement and completion of 0+ interstate calls would be discouraged, "thus frustrating the central purpose of the Communications Act, i.e., 'to make available, so far as possible, to all the people of the United States a rapid, efficient, Nationwide, and world-wide wire and radio communication service....'"⁴

Similarly, AT&T's validation and screening databases are composed of information obtained in the course of doing business as an interexchange carrier. In addition, because OSPs do not have access to this information, many 0+ interstate calls cannot be completed.

The Commission also found that the LECs' validation and screening services are common carrier services under the Act.⁵ According to the Commission, "an entity is a common carrier with respect to a particular service if it is under a legal compulsion to 'hold [itself] out indiscriminately to the clientele [it] is

³ Id. at paragraph 19.

⁴ Id. at paragraph 22, citing 47 USC § 151.

⁵ 47 USC § 153(h) defines "common carrier" as "any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio...."

suited to serve,' or if it in fact does so even without any legal compulsion."⁶ In addition, the Commission stated that "[i]f a service provider does or will possess market power because of a shortage of alternative suppliers or capacity or because customers lack the ability or interest to represent themselves adequately in dealings with the service provider, we will require the provider of a communications service to hold itself out indiscriminately to the public on a common carrier basis."⁷

The Commission found that access to validation and screening services is necessary to enable the provision of interexchange operator services; the LECs' validation and screening databases are a byproduct of their local exchange service monopoly; and "only the LECs can provide validation and screening data in its original, accurate, and up-to-date form."⁸ Therefore, the Commission concluded, the "LECs should be legally obligated to hold themselves out indiscriminately as common carrier providers of these services...", and the Commission required them to do so.

Similarly, the Commission should require AT&T to hold itself out indiscriminately as a common carrier provider of validation and screening service. AT&T's ability to use 0+ access is a

⁶ LEC Billing Order at paragraph 24, citing NARMC v. FCC, 525 F.2d 630 at 641, 642 (D.C. Circular 1976), cert. denied, 425 U.S. 999.

⁷ Id. at paragraph 25.

⁸ Id.

byproduct of its historical position as a monopoly provider of interstate service and AT&T is the only entity that can provide this data. Moreover, AT&T provides access to its validation and screening data to the LECs. Accordingly, the Commission should require AT&T to make this data available to all carriers.

Like validation and screening, BNA also is a common carrier communications service. As the Commission found in the LEC Billing Order, "BNA is essential to make validation service of any practical value to those IXCs who do not have billing and collection agreements with the LECs."⁹ The same is true of AT&T validation service -- it would be of no value unless either BNA was provided or OSPs had billing and collection agreements with AT&T.

⁹ LEC Billing Order at paragraph 38.

The Billing and Collection Detariffing Order¹ does not prevent the Commission from requiring AT&T to provide billing and collection service to operator service providers (OSPs) in connection with calls billed to the AT&T card. In the Billing and Collection Detariffing Order, the Commission found that a carrier's billing and collection for the offerings of unaffiliated carriers is not a communications service for purposes of Title II regulation.² However, the Commission found that such billing and collection is subject to its Title I ancillary jurisdiction under the Communications Act of 1934, as amended. Under Title I, the Commission has jurisdiction over "all persons engaged within the United States in... [interstate] communication [by wire or radio]," (47 USC 152) which includes "the transmission of... sounds... by... wire," and "all... services... incidental to such transmission." 47 USC 153(a). The Commission also found that the exercise of ancillary jurisdiction requires a record finding that such regulation would "be directed at protecting or promoting a statutory purpose."³

The Commission did not exercise its ancillary jurisdiction in the Billing and Collection Detariffing Order because it found that there was sufficient competition or potential competition in the billing and collection of interstate services to control

¹ Detariffing of Billing and Collection Services, 102 FCC 2d 1150 (Billing and Collection Detariffing Order), recon. denied, 1 FCC Rcd 455 (1986).

² Billing and Collection Detariffing Order at 1168.

³ Id. at 1170.

excessive rates or unreasonable practices on the part of exchange carriers. Accordingly, the Commission concluded that no statutory purpose would be served by continuing to regulate billing and collection.

However, where needed to protect or promote a statutory purpose, such as preventing unreasonable practices, promoting competition, or making available efficient nationwide service, the Commission could regulate billing and collection services and remain in perfect harmony with its Billing and Collection Detariffing Order. Title I authorizes the Commission to "establish rules of conduct and other regulations governing the service of individuals..." for this purpose. 47 USC § 154(f)(4)(I).